

STATE OF CALIFORNIA
California Energy Commission

California Energy Commission

DOCKETED
11-AFC-02

TN # 69617

FEB. 19 2013

In the Matter of:

**APPLICATION FOR CERTIFICATION
FOR THE HIDDEN HILLS SOLAR
ENERGY GENERATION SYSTEM**

Docket No. 11-AFC-02

**PREHEARING CONFERENCE STATEMENT
OLD SPANISH TRAIL ASSOCIATION**

February 18, 2013

Jack Prichett
President, Tecopa Chapter
Old Spanish Trail Association (OSTA)
857 Nowita Place
Venice, CA 90291
310 895-4747
jackprichett@ca.rr.com

STATE OF CALIFORNIA
California Energy Commission

In the Matter of:

Docket No. 11-AFC-02

**APPLICATION FOR CERTIFICATION
FOR THE HIDDEN HILLS SOLAR
ENERGY GENERATION SYSTEM**

**PREHEARING CONFERENCE STATEMENT OF INTERVENOR
OLD SPANISH TRAIL ASSOCIATION**

Intervenor Old Spanish Trail Association (“OSTA”) hereby submits its Prehearing Conference Statement pursuant to the Prehearing Conference and Evidentiary Hearing and Order (“Order”) in the Matter of Application for Certification of the Hidden Hills Solar Energy Generating System (“HHSEGS”, or “Project”).

The Order identifies nine items [labeled a) through i)]. OSTA responds to each of these as follows:

- a) The subject areas that are complete and ready to proceed to Evidentiary Hearing: The Cultural Resources area, in particular issues regarding the Old Spanish National Historic Trail/Mormon Road Northern Corridor (“OSNHT/MR NC”), is ready to proceed to Evidentiary Hearing with the sole exception of documents and writings relating to Brightsource’s pedestrian survey of the project site. OSTA has previously requested these documents and writings, but BrightSource has continuously refused production. The specific documents, their relevancy and necessity for production are set forth in OSTA’s pending Motions for Subpoena Duces

Tecum and to Strike..., previously filed on February 18, 2013 (“Motions”). These Motions seek production of documents and writings, as described therein, relating to Applicant Brightsource’s pedestrian survey of the project site.

- b) The subject areas that are not complete or ready to proceed to Evidentiary Hearing: There are no Cultural Resources areas that are not complete or not ready to proceed to Evidentiary Hearing, again with the sole exception of the documents and writing described above in item a), which are the subject of OSTA’s pending Motions.
- c) The subject areas within Cultural Resources that remain disputed and require adjudication, and the precise nature of the dispute for each of these areas. The areas in dispute between OSTA and the BrightSource, as represented in the area of Cultural Resources by the consultant firm CH2MHill, are as follows:
 - 1. Whether segments of the OSNHT/MR NC, and sites associated with its use, are within the Project boundaries. Whether the grading and earth movement of the site and construction of the generation plant will permanently destroy this portion of the Trail Corridor and will have indirect impacts to cultural resources just outside the Project boundaries. For example, whether the large work force involved in construction is likely to place pressure on the Stump Springs Area of Critical Environmental Concern. Also, whether the Project, with its twin 750-foot towers will dramatically impact the visual resources of the Pahrump Valley and the ability to vicariously enjoy the experience of the OSNHT/MR NC.
 - 2. Whether, despite CH2MHill’s assertion that an archaeological pedestrian survey of the entire Project site performed in 2011 and a later study entitled “Historic Trails and Roads Technical Study” [CONFIDENTIAL Attachment DR125, March 30, 2012], it can be concluded that there is no relevant evidence of portions of the OSNHT/MR NC remaining on the Project site. [NOTE: OSTA cannot properly assess BrightSource’s claim without access to the research methods and findings of the 2011 pedestrian survey. On February 18, 2013, OSTA filed the Motions seeking documents from BrightSource/CH2MHill that would allow OSTA to assess the validity of BrightSource’s claims regarding the 2011 pedestrian survey.]

In contrast to BrightSource’s claims, archaeological pedestrian surveys conducted in 2010, 2011, and 2012 by OSTA have recorded segments of the trace on the Project site, with photographic and GPS recordation of these segments. In addition, OSTA has recorded segments of mule trace in the Pahrump Valley

southwest of HHSEGS leading from the Project site.

3. Whether under all relevant facts BrightSource's characterization of provisions of the National Register of Historic Places is correct. (See, Applicant's Opening Testimony ("AOT"), pp. 11-12.) For instance, there is no NRHP requirement that the Trail be part of the route mapped by Fremont (AOT, p. 12). Using such a characterization BrightSource concludes that NRHP criteria do not apply to segments that may fall within the Project site. In connection with its characterization, whether, BrightSource can continue to ignore or must it acknowledge the existence and significance of the provisions of the National Trails System Act and U.S. Federal Standards for National Historic Trails (OSTA Exhibit 623, herein).
4. Whether BrightSource can continue to obfuscate, delay and refuse to cooperate and work with OSTA to compare observational data, review archival sources and/or attempt to reconcile their wide differences in interpretation. For example, CH2MHill made one attempt to contact OSTA directly, shown in the list of Consultation Letters to Local Historical Societies (Application for Certification, Vol. 2, Appendix 5-3A,) reveals that their letter was mailed mistakenly to Las Vegas, NV, rather than Las Vegas, NM, where the Association Manager maintains a P.O. Box. BrightSource made no further attempt to contact OSTA directly, even though OSTA maintains a highly visible web site.
5. Whether BrightSource's contention (AOT, p.38) that mitigation measure CUL-9, recommended in the CEC Staff's Final Staff Assessment, should be deleted in its entirety, or, as OSTA contends, expanded and customized to repair the great damages which will be caused if the Project proceeds. Since OSTA has produced evidence to show that the Project will impact the OSNHT/MR NC, it is axiomatic that mitigations are required to attempt to offset the damage to Trail resources should the Project proceed. OSTA asserts that mitigation measures stronger than those proposed in the FSA are required for CUL-9.
6. The argument above, relating to CUL-9, applies to CUL-10. OSTA also asserts that stronger mitigation measures are required for CUL-10, to ensure that the Trail resources lost forever will live on as part of an innovative, appropriate interpretive and educational plan.

d) Identity of OSTA witnesses and summary of testimony

Name: Jack Prichett

Subject area: Part I: Old Spanish National Historic Trail route, protection under Federal law and standards, relationship to the HHSEGS site; Part II: Deficiencies of CUL-9 as written in CEC's FSA and proposed changes to strengthen the mitigation.

Summary of Testimony: Part I of Mr. Prichett's testimony will address the archival and archaeological evidence that the HHSEGS project will impact portions of the OSNHT/MR NC and will demonstrate the applicability of the National Trails System Act and the Federal supporting Trail Standards. Part II of his testimony will address the need for more complete data recovery to bolster mitigation measure CUL-9, as it is articulated in the CEC's Final Staff Assessment.

Qualifications: PhD training in anthropology at Univ. of California, Berkeley; Former historical archaeologist in the San Francisco bay area; five years of archival research and site survey on segments of OSNHT/MR NC adjacent to the HHSEGS site and Stump Springs.

Time required: 90 minutes

In person or via phone: In person

Name: Elizabeth van Till Warren, PhD

Subject area: Historical significance of the Old Spanish National Historic Trail

Summary of Testimony: Dr. Warren will testify as to the criteria guiding the establishment of National Historic Trails; the special recognition they receive under Federal government statute and management; and some of the historical personages and events along Mojave portions of the Trail.

Qualifications: Ph. D. in American history, specializing in Old Spanish Trail history and 19th and 20th Nevada history. Her M.A. thesis topic examined the route followed by Antonio Armijo, who led the first mule caravan from Santa Fe to Los Angeles.

Time required: 30 minutes

In person or via phone: In person

Name: Richard A. Bent

Subject area: Mobile museums, interpretive information, exhibitions and displays

Summary of Testimony: Mr. Bent will testify to deficiencies of the FSA's mitigation measure CUL-10, which delineates proposed development of displays and interpretive materials. He will explain proposed changes to strengthen the mitigation and provide the rationale for the broader scope.

Qualifications: 30 years experience in trade shows, exhibitions. For 25 years, he was manager of trade shows and exhibitions, then marketing communications, for Northrop Grumman, a Fortune 100 company.

Time required: 30 minutes

In person or via phone: in person

Name: Tom Sutak

Subject area: History of the Mormon Road

Summary of Testimony: Mr. Sutak will testify to the well-documented history of the Mormon Road and its significance to southern California and Southwestern U.S. history. As a scholar of Mormon history, Mr. Sutak has done extensive archival research on the OSNHT/MR NC. He possesses detailed knowledge of archival accounts of those who traveled the trail, including descriptions of the Stump/Hidden Hills/Rocher qui pleu area.

Qualifications: Trained researcher and published author on Mormon history. His book, *Into the Jaws of Hell*, a biography of Mormon leader Jefferson Hunt, was published in early 2012. Hunt traveled over the OST.

Time required: 30 minutes

In person or via phone: Phone, or testimony read by proxy by Jack Prichett

Name: Susan Sorrells

Subject area: Importance of cultural resources and unspoiled desert environment to businesses in the Pahrump/Tecopa/Shoshone area. She speaks as a lifelong resident of the Shoshone, CA/Pahrump, NV area who wishes to see the local environment protected from industrial development.

Summary of Testimony: Will express her opposition to licensing the HHSEGS plant and her support for the position of the Old Spanish Trail Association. Her business, and others, depends on tourists attracted to the wild desert environment and local history—the old mines, the Old Spanish Trail, and ghost towns.

Qualifications: More than 30 years of experience as a business owner in Shoshone and a lifelong attachment to this part of California, in which I was raised. Ms. Sorrells was a founder of the Shoshone Museum, a venue mentioned in the FSA as a possible location for displays and interpretive materials specified in CUL-10.

Time required: 30 minutes

In person or via phone: in person

e) **Subject areas in which OSTA desires to cross-examine witnesses**

Witness	Party	Scope	Issue(s)	Time Desired
Natalie Lawson	BrightSource/ CH2MHill	Specifics of archival research conducted and field methods for 2011 pedestrian survey		60 minutes
CEC staff member responsible for writing and answering questions on OSNHT/MR NC sections of FSA	CEC	Assessment of impacts to OSNHT/MR NC and mitigations CUL-9 and CUL-10	Metrics/methods for assessing impacts; methods/methods for arriving at measures recommended in CUL-9 and CUL-10	45 minutes
Thomas Gates	CEC	Gates' field visits to HHSEGS project site with regard to OSNHT/MR NC		30 minutes

f) Exhibits and declarations list

OSTA EXHIBIT LIST

NOTE 1: The Old Spanish Trail Association's Exhibits are numbered **600 to 699**. All of OSTA's exhibits relate to Subject Area 16, Cultural Resources.

NOTE 2: OSTA may receive additional documents from BrightSource or its consultant CH2MHill as a response to OSTA's motion for a Subpoena Duces Tecum that was filed on February 18, 2013. These documents may become, in whole or in part, exhibits, which OSTA may introduce into evidence.

KEY TO EXHIBITS:

Exhibits 600-622 are linked to Jack Prichett testimony; Subject areas are Testimony Part I: Old Spanish National Historic Trail route, protection under Federal law and standards, relationship to the HHSEGS site; Part II: Deficiencies of CUL-9 as written in CEC's FSA and proposed changes to strengthen the mitigation.

Exhibits 650-653 are linked to Elizabeth Warren testimony;

Subject area is Historical Significance of the Old Spanish National Historic Trail

Exhibit 660 is linked to Richard Bent testimony; Subject area is Deficiency of CUL-10

Exhibits 670–685 are linked to Tom Sutak testimony; Subject area is Historical Significance of the Mormon Road

Exhibit numbers 623-649, 654-659, 661-669 and 686 to 699 are unassigned

Exhibits highlighted in yellow are:

1. Available as web links on the Internet (link is included with the Exhibit description.)
2. Cited in another publication that is an Exhibit (e.g. 613-Bigler is cited in 605-Steiner.)
3. Rare, unpublished manuscripts in archives (such as the Bancroft Library in Berkeley) that are not publicly available.

Exhibit 600	National Trails System Act, revised 2009. http://www.nps.gov/nts/legislation.html
Exhibit 601	Hafen, Leroy and Hafen, Ann 1993. The Old Spanish Trail. Lincoln, NE, and London: University of Nebraska Bison Books (orig. 1954 by A.H. Clark Co., Glendale, CA, as part of the "Far West and the Rockies" historical series.), pp. 341-369.
Exhibit 602	Lyman, Edward Leo. <i>The Overland Journey from Utah to California</i> . Reno & Las Vegas: University of Nevada Press, 2004.
Exhibit 603	Walker, Clifford J. 2009. <i>Gone the Way of the Earth: Indian Slave Trade in the Old Southwest</i> . Barstow, CA: Mojave River Valley Museum Publications.
Exhibit 604	Crampton, C. Gregory and Madsen, Steven K., 2007. <i>In search of the Spanish Trail: Santa Fe to Los Angeles 1829-1848</i> . Layton, Utah: Gibbs Smith, Publisher.
Exhibit 605	Steiner, Harold. <i>The Old Spanish Trail Across the Mojave Desert</i> . Las Vegas: The Haldor Company, 1999, p. 159 and <i>passim</i> .
Exhibit 606	Sutak, Tom. <i>Into the Jaws of Hell – Jefferson Hunt: The Death Valley '49ers Wagon Trail & His Adventures in California 1846-1857</i> . Danville: Pine Park Publishing, 2012. http://intothejawsofhell.com

Exhibit 607	CH2MHill 2012, Historic Trails and Roads Technical. HHSEGS study performed for Hidden Hills Solar and given Confidential status as Attachment DR125. NOT PUBLICLY AVAILABLE.
Exhibit 608	HHSEGS Final Staff Assessment, Dec. 2012. Chapter 4, Cultural Resources. http://www.energy.ca.gov/sitingcases/hiddenhills/documents/fsa/04_Cultural_Resources_596-798.pdf
Exhibit 609	Official NPS map of the Old Spanish National Historic Trail http://www.nps.gov/olsp/planyourvisit/maps.htm
Exhibit 610	Prichett, Jack. The Old Spanish National Historic Trail: A Report on Cultural and Visual Resources in the Near Vicinity of the Proposed Hidden Hills Solar Energy System Plant, Inyo County, CA, 2012. Submitted on behalf of Old Spanish Trail Ass'n, an intervenor in the HHSEGS license application. http://www.energy.ca.gov/sitingcases/hiddenhills/documents/others/2012-04-27_Jack_Prichett_OSTA_Cultural_Rsources_Report.pdf
Exhibit 611	Lorton, William B. 1849. <i>Journal</i> . Unpublished ms. The Bancroft Library, Univ. of California, Berkeley, Calif. [Notes: Lorton was traveling with the San Joaquin Company (often called the Jefferson Hunt Wagon Train). The dates note in brackets are from Lorton's journal; he lost track of the calendar, then later realized, and corrected, his dates; LeRoy Johnson, who is editing the journal has corrected dates of the Stump Spring entries.]
Exhibit 612	Pratt and Choteau quoted in Hafen and Hafen 1993 (Exhibit 601), pp. 365-369.
Exhibit 613	Bigler, Henry W., cited in Steiner 1999 (Exhibit 605), p.159.
Exhibit 614	Prichett, Jack 2012. See Exhibit 610, p 43. http://www.energy.ca.gov/sitingcases/hiddenhills/documents/others/2012-04-27_Jack_Prichett_OSTA_Cultural_Rsources_Report.pdf
Exhibit 615	CH2MHill 2012, Historic Trails and Roads Technical. HHSEGS study performed for Hidden Hills Solar and given Confidential status as Attachment DR125. NOT PUBLICLY AVAILABLE. See page 3-1.
Exhibit 616	Prichett, Jack 2012. See Exhibit 610, p 44 http://www.energy.ca.gov/sitingcases/hiddenhills/documents/others/2012-04-27_Jack_Prichett_OSTA_Cultural_Rsources_Report.pdf
Exhibit 617	Steiner, 1999. See Exhibit 605, p. 161.
Exhibit 618	Prichett, Jack 2012. See Exhibit 610, p 40 http://www.energy.ca.gov/sitingcases/hiddenhills/documents/others/2012-04-27_Jack_Prichett_OSTA_Cultural_Rsources_Report.pdf

Exhibit 619	Google Earth image with plot of OSTA waypoints, showing “beeline” course of mule trace from Charleston View toward Emigrant Pass.
Exhibit 620	Prichett, Jack 2012. See Exhibit 610, p 34 http://www.energy.ca.gov/sitingcases/hiddenhills/documents/others/2012-04-27_Jack_Prichett_OSTA_Cultural_Rsources_Report.pdf
Exhibit 621	Google Earth image showing OSNHT mule trace crossing Emigrant Pass. Emigrant Pass is the datum, or starting point for OSTA’s “re-discovery” and GPS recording of the trace.
Exhibit 622	Vasek, Frank C. 1980. Creosote bush: long-lived colonies in the Mojave desert. American Journal of Botany 67(2):246-255.
Exhibit 623	Federal Trail Data Standards, Appendix B, 2011. Approved and issued November 2011 by the Federal Trails Data Standards Team of the Federal Geographic Data Committee. See pp. 47-48 of Appendix B. http://www.fgdc.gov/standards/projects/FGDC-standards-projects/trail-data-standard/trail-data-standards
Exhibit 624	Sample LIDAR image of a 19 th Century California archaeological site, showing features of 19 th century activity not visible in aerial or visible light satellite imagery. Imagery provided by ECORP Consulting, Inc., Rocklin CA.
Exhibits 625-649	<i>These exhibit references intentionally left blank.</i>
650	Old Spanish Trail Association, 2001. Official Response [to the 2000 NPS Feasibility Study for the Old Spanish Trail nomination to National Historic Trail status]. Elizabeth von Till Warren and Harold Austin Steiner and submitted to National Park Service.
651	Hafen, Leroy and Hafen, Ann 1993. The Old Spanish Trail. Lincoln, NE, and London: University of Nebraska Bison Books (orig. 1954 by A.H. Clark Co., Glendale, CA, as part of the “Far West and the Rockies historical series.)
652	Bryant, Edwin, 1985. What I Saw in California. Lincoln, NE and London: University of Nebraska Press [republishing of the earlier original].

653	Fremont, Brevet Capt. John C. , 1845. Report on the Exploring Expedition to the Rocky Mountains in the Year 1842 and to Oregon and North California in the Years 1843-'44. Washington DC: Gales and Seaton, Printers.
Exhibit 654-659	<i>These exhibit references intentionally left blank.</i>
Exhibit 660	Van of Enchantment website. http://www.vanofenchantment.org/
Exhibit 661-669	<i>These exhibit references intentionally left blank.</i>
Exhibit 670	Bigler, David L. and Will Bagley. <i>Army of Israel: Mormon Battalion Narratives</i> . Spokane: The Arthur H. Clark Company, 2000.
Exhibit 671	<i>Deseret Evening News</i> . Salt Lake City. October 7, 1905. http://udn.lib.utah.edu/cdn/compoundobject/collection/den4/id/11641/rec/240
Exhibit 672	Ellsworth, S. George. <i>The Journals of Addison Pratt</i> . Salt Lake City: University of Utah Press, 1990.
Exhibit 673	Hafen, LeRoy R. and Ann W. Hafen. <i>Old Spanish Trail: Santa Fe to Los Angeles with Extracts from Contemporary Records and Including the Diaries of Antonio Armijo and Orville Pratt</i> . Glendale: The Arthur H. Clark Company, 1954.
Exhibit 674	General Church Minutes 1844-1879. Selected Collections, Brigham Young University, Vol. 1, DVD 18.
Exhibit 675	Hancock, Charles B. "Journal of Charles B. Hancock." MS 1569. LDS Archives. UNABLE TO OBTAIN COPIES.
Exhibit 676	Hancock, Charles B. "Autobiography of Charles Brent Hancock." MS 5285. LDS Archives. UNABLE TO OBTAIN COPIES.
Exhibit 677	Hoover, Vincent A. "Gold and the Arduous Road: The Journal of Vincent A. Hoover and Other Personal Narratives of the Pioneering of the Salt Lake-Los Angeles Road in 1849." Unpublished BANC MSS 71/161 c, reel 56. The Bancroft Library. University of California, Berkeley.
Exhibit 678	Johnson, LeRoy and Tom Sutak. Jargon: Historians' Nemesis. <i>Spanish Traces: Journal of the Old Spanish Trail Association</i> , Autumn, 2011. http://www.oldspanishtrail.org/assets/PDFs/Vol17-22011.pdf

Exhibit 679	Journal History of the Church. LDS Archives.
Exhibit 680	Landon, Michael N., Editor. <i>The Journals of George Q. Cannon: To California in '49</i> . Salt Lake City: Deseret Book Company, 1999.
Exhibit 681	Lyman, Edward Leo. <i>San Bernardino, the Rise and Fall of a California Community</i> . Salt Lake City: Signature Books, 1996.
Exhibit 682	Lyman, Edward Leo. <i>The Overland Journey from Utah to California</i> . Reno & Las Vegas: University of Nevada Press, 2004.
Exhibit 683	Charles C. Rich Collection. Selected Collections, Brigham Young University, Vol. 1.
Exhibit 684	Sonne, Conway B. <i>World of Wakara</i> . San Antonio: Naylor Publishing Co., 1962. UNABLE TO OBTAIN COPY.
Exhibit 685	Sutak, Tom. <i>Into the Jaws of Hell – Jefferson Hunt: The Death Valley '49ers Wagon Trail & His Adventures in California 1846-1857</i> . Danville: Pine Park Publishing, 2012. http://intothejawsofhell.com

g) Subject areas for with the Applicant will seek either a commission override... NOT APPLICABLE TO OSTA

h) Proposals for briefing deadlines, impact of scheduling conflicts, or other scheduling matters

OSTA notes, as it did in **Section f) Exhibits**, that it may receive additional documents from BrightSource or its consultant CH2MHill as a response to OSTA's motion for a Subpoena Duces Tecum that was filed on February 18, 2013. These documents may become, in whole or in part, exhibits, which OSTA may introduce into evidence. This is not expected to affect scheduling.

i) Description of any proposed modifications to the proposed conditions of certification listed in the Final Staff Assessment based upon...consistency with the evidence

OSTA, in its opening testimony, describes proposed modifications to mitigations measures CUL-9 and CUL-10. OSTA's modifications are intended to make the mitigations more commensurate with the impacts to the OSNHT/MR NC, as described in the FSA.

In the FSA, CEC staff concluded: **The project would significantly impact the OST-MRNC by erasing potential tracks and traces on-site...Destruction of the tracks and traces, and the resulting loss of integrity, is irreversible.** Staff has concluded that **this impact on the**

informational values of the OST-MRNC is significant and must be mitigated.” (CEC FSA, p 4.3-116; Emphasis added.)

In addition, CEC staff concluded with respect to Visual Resources: “The integrity of the setting, feeling, and association of the tracks and traces outside of the HHSEGS project site would thus be significantly impacted by the project...(FSA, p. 4.3-116). As the FSA notes these impacts will apply to National Register-listed sections of the OSNHT/MR NC in Nevada. It would also impact segments of the mule trace visible from the low ridge separating the Pahrump and California valleys.

END OF PREHEARING STATEMENT

Dated: February 18, 2013


